Page 1 of 9 Document 1 Richard S. Ralston, Bar # 6290524 WEINSTEIN & RILEY, PS 2001 Western Avenue, Suite 400 2 Seattle, WA 98121 3 Ph. 206-269-3490 Fax 206-269-3493 richardr@w-legal.com 4 Attorneys for Plaintiff 5 6 7 UNITED STATES BANKRUPTCY COURT 8 FOR THE NORTHERN DISTRICT OF ILLINOIS 9 IN RE: Chapter 7 10 Cynthia Walsh, Case No. 08-24490 11 Debtor, 12 Discover Bank, Issuer of the Discover Card, Adversary No. 13 Plaintiff, **COMPLAINT TO DETERMINE** 14 v. **DISCHARGEABILITY OF** 15 Cynthia Walsh, **DEBT: U.S.C. § 523(a)(2)(A) and (C)** 16 Defendant. 17 NOTICE: this is a Complaint alleging that the Defendant has committed fraud against the Plaintiff in connection with the use of a credit account. The 18 Defendant is strongly urged to review it with an attorney. The Defendant may qualify for free or low cost legal assistance. Please contact the State Bar 19 Association for information. 20 Plaintiff alleges: 21 I. PARTIES AND JURISDICTION 22 1. This adversary proceeding is brought under U.S.C. §523(a)(2)(A) and (C). 23 24 1- COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT

Case 08-24490 Doc 26

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- 2. Plaintiff, a foreign corporation licensed to do business in the State of Illinois with all licenses paid, and otherwise is entitled to bring this action, is a creditor in this case.
- 3. Defendant filed a Chapter 7 bankruptcy petition on 09/16/2008.
- 4. The Court has jurisdiction under 28 U.S.C. §§157 and 1334, and 11 U.S.C. §523.
- 5. This is a core proceeding.

II. CAUSE OF ACTION

- 7. As of the petition date, Defendant owed \$6,956.61 on the Account.
- 8. Between 06/25/2008 and 09/01/2008, the Defendant incurred \$6,237.00 in retail charges on the Account (Charges). Of the Account balance, \$6,237.00 of Charges were incurred within 70/90 days of the bankruptcy filing for luxury goods and/or services and/or cash advances for consumer credit. These charges are presumed to be nondischargeable. [See Transaction History, attached as Exhibit A.]
- 9. The totality of the circumstances when the Charges were incurred shows that Defendant did not intend to repay the Charges:
 - 9.1 the Charges were incurred near the date of the bankruptcy filing;
 - 9.2 the Defendant was in poor financial condition;
 - 9.3 the amount charged is high;
 - 9.4 there are numerous charges in a short period of time;
 - 9.5 multiple Charges were incurred on the same day;
 - 9.6 based on the monthly income, monthly living expenses, and circumstances disclosed in the Schedules and Statement of Financial Affairs, no disposable

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9.7 the minimum monthly payment on the \$205,700 of scheduled unsecured debt (based on a required minimum monthly payment on each account of 2% - 3%) exceeded \$6,171 per month before the petition was filed;

income was available to pay the minimum monthly requirement on

- 9.8 the Statement of Financial Affairs indicates that no losses from fire, theft, or gambling were incurred for the one year before the petition was filed.
- 9.9 other unsecured credit was also utilized; and,

unsecured debt;

- 9.10 there were not sufficient liquid assets that could have been used to service unsecured debt.
- 10. Charges were incurred when Defendant could not pay existing financial obligations as they became due.
- 11. By incurring the Charges on the Account, Defendant represented an intention to repay them.
- 12. Defendant obtained money from the Plaintiff through fraud and false pretenses, false representations and/or actual fraud.
- Defendant had a specific intent to defraud Plaintiff by accepting the benefits of 13. the charges without intending to repay them.
- 14. Defendant's actions constitute material misrepresentations of the facts.
- 15. Defendant intended for Plaintiff to rely on those misrepresentations.
- 16. Plaintiff justifiably relied on Defendant's misrepresentations which induced it to lend money to Defendant.
- 17. The Charges were incurred for consumer debt.

Case 08-24490 Doc 26 Filed 12/09/08 Entered 12/09/08 15:05:39 Desc Main Document Page 4 of 9 Defendant's conduct has damaged Plaintiff in the amount of \$6,237.00. 18. 19. Defendant should be denied a discharge of Plaintiff's claim in the amount of \$6,237.00. III. PRAYER FOR RELIEF WHEREFORE, Plaintiff prays for: A monetary judgment in the amount of \$6,237.00, including accrued interest to 1. the petition filing date, plus contract rate interest to date of judgment, to continue to accrue post-judgment; An Order of nondischargeability under 11 U.S.C. § 523 (a)(2)(A), and (C); 2. 3. An award of reasonable attorney fees and costs; and Additional relief as may be just and equitable. 4. DATED: WEINSTÉIN & KILHY, P.S. Richard S. Ralston, Bar # 6290524 2001 Western Avenue, Suite 400 Seattle, WA 98121 Ph. 206-269-3490 Fax 206-269-3493 richardr@w-legal.com Attorneys for Plaintiff

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TO SECURE THE CONTRACT OF T	
Table 1 Alexandre	ADVERSARY PROCEEDING NUMBER
COVER SHE	
(instructions of the verte)	
	DEFENDANTS
Discover Bank, Issuer of the Discover Card	CYNTHIA WALSH
· · · · · · · · · · · · · · · · · · ·	ATTORNEYS (If Known)
Richard S. Ralston	C DAVID WARD ATTORNEY AT LAW
Weinstein & Riley, P.S.	2756 ROUTE 34
2001 Western Avenue, Suite 400 Seattle, WA 98121	OSWEGO, IL 60543
206-269-3490	6305853164
	PARTY (Check One Box Only)
☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin	☐ U.S. Trustee/Bankruptcy Admin
☐ Creditor ☐ Other	☐ Creditor ☐ Other
☐ Trustee	☐ Trustee
	AND OF A CONOL PROVIDENCE ALL LIG CONTRICTOR BRIGHTED
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF C. Claim for Nondischargeability of Debt pursuant to § 523(a)(2)	AUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)
Claim for Nondischargeability of Debt pursuant to § 525(a)(2)	
	RECOFSUIT AS THE
ap /o fave (5) boxes (5) and only the legal case. If we	nión as 1, file for emarcia (mineral), secono como musico musico (m. 1961).
FRBP 7001(1) - Recovery of Money/Property	FRBP 7001(6) - Dischargeability (continued)
11- Recovery of money/property - §542 turnover of property	☐ 61- Dischargeability - §523(a)(5), domestic support☐ 68- Dischargeability - §523(a)(6), willful and malicious injury
☐ 12- Recovery of money/property - §547 preference ☐ 13- Recovery of money/property - §548 fraudulent transfer	63- Dischargeability - §523(a)(8), student loan
14- Recovery of money/property – other	64- Dischargeability - §523(a)(15), divorce/sep property
	settlement/decree
FRBP 7001(2) – Validity, Priority or Extent of Lien	☐ 65- Dischargeability – other
21- Validity, priority or extent of lien or other interest in property	FRBP 7001(7) – Injunctive Relief
FRBP 7001(3) - Approval of Sale of Property	71- Injunctive relief – reinstatement of stay
☐ 31- Approval of sale of property of estate and of a co-owner -	☐ 72- Injunctive relief – other
§363(h)	FRBP 7001(8) - Subordination of Claim or Interest
FRBP 7001(4) – Objection/Revocation of Discharge	81-Subordination of claim or interest
41- Objection / Revocation of discharge - §727(c),(d),(e)	
	FRBP 7001(9) - Declaratory Judgement
FRBP 7001(5) - Revocation of Confirmation	91- Declaratory Judgement
51- Revocation of confirmation	FRBP 7001(10) - Determination of Removed Action
FRBP 7001(6) - Dischargeability	01- Determination of removed claim or cause
66-Dischargeability - §523(a),(1),(14),(14A) priority tax claims	
	Other OCCUPACION 15 H.S.C. 8878AAA at acc
representation, actual fraud	SS-SIPA Case – 15 U.S.C. §§78AAA et.seq. O2-Other (e.g. other actions that would have been brought in
67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzleme	state court if unrelated to bankruptcy case
larceny (continued next column)	
,	
☐ Check if this case involves a substantive issue of state law.	☐ Check if this is asserted to be a class action under FRCP 23
☐ Check if a jury trial is demanded in complaint	Demand \$6,237.00
Other Relief Sought	

THE PARTY OF THE PROPERTY OF T	71	owing Etrins (SEVERS	ARY	
NAME OF DEBTOR CYNTHIA WALSH			ANTERIOR CO. S. C. C. LANCON	BANKRUPTCY CASE NO. 08-24490
· · · · · · · · · · · · · · · · · · ·		DIVISIONAL OFFICE CHICAGO		NAME OF JUDGE BRUCE W. BLACK
PLAINTIFF	DEFENDA	NT	ADVE	RSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSAL	RY IS PENDI	ING DIVISIONAL OF	FICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR	PLAINTIFF		7	
DATE December 9, 2008		PRINT N Richard S		ATPORNEY (OR PLAINTIFF)

INSTRUCTIONS

The filing of the bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, if it is required by the court. In some courts, the cover sheet is not required when the adversary proceeding is field electronically through the court's Case Management/Electronic Case Files (CM/ECF) system. (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on our court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Parties. Give the name of the parties to the adversary proceeding exactly as they appear on the complaint. Give the names and addresses of the attorneys if known.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.



Address:

Account Holder 2

Account Holder Information

Account Holder 1

CINDY WALSH Name:

Address: 404 KNIGHTS BRIDGE CT City\State\Zip OSWEGO, IL 60543-8733

Name:

08/20/2008

08/20/2008

08/20/2008

08/20/2008

 City\State\Zip
 OSWEGO, IL 80543-8733
 City\State\Zip

 SSN:
 / 0080
 SSN:

Statement Facsimile **Account Number:** -3328 Statement Date: 9/4/2008 Credit Limit: \$0.00 Current Balance: \$6,956.61 **Posting Date** Reference **Transaction Date** Description Amount 09/03/2008 09/03/2008 PAYMENT - THANK YOU 09/01/2008 WAL-MART STORE - #1779 09/01/2008 \$48.19 **BRIDGEVIEW I** 09/01/2008 09/01/2008 PORTILLO'S HOT DOGS \$16.81 CHICAGO IL 08/31/2008 **DOMINICKS FUEL 1957 OSWEGO** \$99.75 08/31/2008 08/30/2008 08/30/2008 DICKS SPORTING GOODS O LIL **\$**60.53 08/30/2008 08/30/2008 WAL-MART SC - #3400 OSWEGO \$184.95 \$19.58 08/29/2008 08/29/2008 MONARCH-BFLO AIRPORT BUFFALONY 08/29/2008 MONARCH-BFLO AIRPORT 08/29/2008 \$59.81 **BUFFALO NY** 08/29/2008 **\$**6.33 08/29/2008 POTBELLY 007 CHICAGO IL 08/29/2008 08/29/2008 **NOCO EXPRESS #58** \$27.96 CHEEKTOWAGA NY 08/29/2008 \$41.00 08/29/2008 MIDWAY PARKING CHICAGO IL: 08/27/2008 08/27/2008 EDIBLE ARRANGEMENTS -\$65.00 **GRAND RAPIDS** 08/26/2008 08/26/2008 WHOLEFDS NPV 10129 \$11.88 NAPERVILLEIL 08/26/2008 08/26/2008 PANERA BREAD #0216 OSWEGO \$54.49 WAL-MART SC - #3400 OSWEGO 08/25/2008 08/25/2008 \$102.90 **DOMINICKS FUEL 1957 OSWEGO** \$58.17 08/25/2008 08/25/2008 IL 08/24/2008 08/24/2008 MEIJER #239.OSWEGO IL \$53.36 08/20/2008 08/20/2008 MEIJER #239 OSWEGO IL \$57.56 SWA TLD 52608756105995 08/20/2008 08/20/2008 \$5.00 DALLAS TX

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SHOWCASE BUSINESS CENTER

TORRANCE C 08/20/2008 INGATE CHICAGO IL

INGATE CHICAGO IL

08/20/2008 MCDONALD'S F20065 OSWEGO

\$7.58

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Case 08-24490	Doc 26	Filed 12/09/08	Entered 12/09/08 15:05:39	Desc Main
		Document	Page 8 of 9	

08/18/2008	08/18/2008	HP HOME STORE 888-999-4747 - CO	\$ 169.98
08/16/2008	08/16/2008	CHARLOTTE RUSSE 120 -	\$24.35
08/16/2008	08/16/2008	AURORA IL VICTORIA'S SECRET STORES - AURORA IL	\$ 54.13
08/16/2008	08/16/2008	MACY'S EAST #263 - MANCHESTER CT	\$50.00
08/15/2008	08/15/2008	WALGREENS #4779 - MONTGOMERY IL	\$ 46.79
08/15/2008	08/15/2008	131 S. DEARBORN CHICAGO IL	\$22.00
08/15/2008	08/15/2008	BP OIL 03201126 OSWEGO IL - BROWN'S CHICKEN AN -	\$42.30
08/14/2008:	08/14/2008	BROWN'S CHICKEN AN	\$3 9.59
08/12/2008	08/12/2008	USPS 1615500538 - MONTGOMERY IL	\$50.80
08/11 /20 08	08/11/2008	ENT*ENTERTAINMENT BOOK 888 - -231-SAVE	\$2 5:00
08/11/2008	08/11/2008	SHELL 22527440378209 - ROMEOVILLE IL	\$62.57
08/11/2008	08/11/2008	UNITED 01621803028400 ROSEMONT IL	\$372 :50
08/11/2008	08/11/2008	US AIRWAYS03723184377555 - INTERNET A	\$10.00
08/1:1/2008	08/11/2008	US AIRWAYS03723184377684 INTERNET A	\$25.00
08/11/2008		MEIJER #239 OSWEGO IL -	\$40.05
08/08/2008		EV & JAYNE'S IRISH INN	\$220.00
08/04/2008	08/04/2008	MBS DIRECT TEXTBOOKS - COLUMBIA MO	\$173.11
07/29/2008	.07/29/2008	GOOGLE TEMTCOMPANY GOOGLE COM/OHCA	\$9.9 5
07/28/2008	07/28/2008	ARBONNE INTERNATIONAL 800 272-6663	\$42.65
0 7/25/2008	07/25/2008	ZAP*ZAPPOS.COM 888-492-7767	\$299.00
07/22/2008	07/22/2008	KERASOTES THEATRES -	\$19.00
07/21/2008	07/21/2008	EDIBLE ARRANGEMENTS #661 - CHICAGO IL	\$97.89
07/19/2008		CAFEPRESS.COM 877-809-1659 - CA	\$4.99
07/19/2008	07/19/2008	PAYMENT - THANK YOU -	(\$400.00)
07/16/2008	07/16/2008	GAS MART 41 EDWARDSVILLE IL -	\$54.03
07/13/2008	07/13/2008	USPS 1615500538 - MONTGOMERY IL	\$10.40
07/11/2008		GIORDANOS OF OSWEGO - OSWEGO IL	\$50.58
07/10/2008	07/10/2008	FULLERS CAR WASH OF AU	** - \$19.95
07/10/2008	07/10/2008	NTB #793 MONTGOMERY IL -	\$14.29

Case 08-24490 Doc 26 Filed 12/09/08 Entered 12/09/08 15:05:39 Desc Main Document Page 9 of 9

07/10/2008	07/10/2008	JEWEL OSWEGO IL	\$57.44
07/10/2008	07/10/2008	USPS 1615500538 MONTGOMERY IL	- \$6.45
07/09/2008	07/09/2008	TJ MAXX #868 OSWEGO IL	- (\$32.16)
07/09/2008	07/09/2008	TARGET OSWEGO IL	- \$48.86
07/09/2008	07/09/2008	TJ MAXX #868 OSWEGO IL	- \$59.50
07/07/2008	07/07/2008	MR HUBCAP & WHEELS CRESTWOOD IL	- \$92.54
07/06/2008	07/06/2008	CONTROL OF A PART OF THE PROPERTY OF THE PROPE	- \$ 25.25
07/05/2008	07/05/2008	BWW #0159 OSWEGO IL	- \$58.72
07/05/2008	CONTROL TERMINATED TO THE SELECT OF THE USE OF THE OWNER, WHICH SELECTION OF THE PROPERTY OF T	JEWEL OSWEGO IL	- \$113.68
07/05/2008	07/05/2008	TARGET OSWEGO IL	- \$159.53
07/05/2008	A fact of move and the first of the contract o	WALGREENS #4779	- \$3 0.67
an again tagain		MONTGOMERY IL.	
07/04/2008	07/04/2008	DRESS BARN #1039 OSWEGO IL	- \$121.15
07/03/2008	07/03/2008	PARTY CITY #477 OSWEGO IL	- \$ 31.07
07/01/2008	07/01/2008	JEWEL OSWEGO IL	- \$20.13
06/30/2008	06/30/2008	JEWEL OSWEGO L	- \$88.67
06/30/2008	06/30/2008	SWEET TOMATOES 112 AURORA	- \$24.38
06/28/2008	06/28/2008	JEWEL-OSCO OSWEGO IL	- \$48 .59
06/28/2008	06/28/2008	TURTLE WAX CAR WASH/AUTO AURORA IL	- \$139.00
06/28/2008	06/28/2008	JEWEL OSWEGO IL	- \$80.3 <i>7</i>
06/28/2008	06/28/2008	TARGET OSWEGO IL	- \$26.77
06/28/2008	06/28/2008	PROPERTY AND THE PROPERTY OF 	\$9.95
06/28/2008	06/28/2008	Control Contro	- \$165.09
06/28/2008		GIORDANOS OF OSWEGO	\$29.49
	No est occident (attribut) suit (attribut)	OSWEGO IL	240
06/28/2008	06/28/2008	FAMOUS DAVE'S #2074 OSWEGO IL	- \$15.96
06/27/2008	06/27/2008	BEST BUY CO OSWEGO IL	- \$68.61
06/26/2008	06/26/2008		- \$10.80
06/26/2008		STARBUCKS USA 00097071 OSWEGO IL	
06/26/2008		BP OIL 01152446 CRESTWOOD IL	- \$5.58
06/26/2008		BP OIL 01152446 CRESTWOOD IL	engagement in the transportation and the
06/25/2008	06/25/2008	TARGET OSWEGO IL	- \$104.89
06/24/2008	06/24/2008	PAYMENT - THANK YOU	- (\$400.00)
06/24/2008	06/24/2008	REWARD REDEMPTION CREDIT	- (\$20.00)
06/22/2008	06/22/2008	TRANSFER OF BAL FROM 6011	- \$2,020.66

Credit Card Statement - - 3328 File Date: 09/16/2008